

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MARYLAND

3 SAGENT TECHNOLOGY, INC * CIVIL ACTION JFM-02-2505
4 Plaintiff

5 *

6 vs. Baltimore, Maryland

7 *

8 MICROS SYSTEMS, INC. Defendant * January 22, 2003

9 * * *

10 Deposition of SCOTT CALLNIN, a witness of
11 lawful age, taken on behalf of the Plaintiff in the
12 above-entitled cause, pending in the District Court of
13 the United States for the District of Maryland, before
14 Dawn L. Venker, a Notary Public in and for Baltimore
15 County, Maryland, at 7031 Columbia Gateway Drive,
16 Columbia, Maryland 21046, on the 22nd day of January,
2003.

17 * * * *

18 APPEARANCES:

19 SCOTT H. PHILLIPS, Esquire
20 For the Plaintiff

21 MICHAEL H. TOW, Esquire
For the Defendant

ALSO PRESENT: PETER ROGERS, JR.

Reported By: Dawn L. Venker

<p>26</p> <p>1 rest of the technology and hospitality companies into 2 downward trends. Certainly not as deep as most 3 companies were feeling it, but in the way of some of 4 the financial positions, cash available, and that sort 5 of thing, I don't know what the standing was at that 6 time.</p> <p>7 Q Was there any discussion about concessions 8 that Sagent might be able to make to make this 9 transaction more attractive to MICROS?</p> <p>10 A There would definitely be fairly deep 11 discounting involved off of their regular retail 12 pricing.</p> <p>13 Q Anything else along those lines?</p> <p>14 A That Sagent would assist us in selling had 15 been the understanding of the relationship going back 16 for a number of years. That we were 50-50 partners on 17 this project, and that they put in their equal time on 18 helping us to sell to various clients as well.</p> <p>19 Q You say that went back a number of years. 20 Was that specifically discussed at this June 6th 21 meeting?</p>	<p>28</p> <p>1 we'll mark as Number 2, please.</p> <p>2 (Callnin Deposition Exhibit Number 2 was 3 marked by the reporter.)</p> <p>4 MR. PHILLIPS: For the record, Exhibit 5 Number 2 reflects MICROS Bates Numbers 5 through 10.</p> <p>6 Q If you would take a moment to look through 7 that, if you would, sir, MICROS Bates number 5 through 8 10.</p> <p>9 Mr. Callnin, feel free to look at all of 10 that. I can tell that most of my questions will be on 11 page 9, but feel free to look at all of it.</p> <p>12 MR. TOW: You should just look at all of it 13 to understand what you are looking at.</p> <p>14 Q Ready to proceed? As I said, let me ask 15 you turn to page 9, which I think you have already 16 done. Let me ask you to look at the bottom e-mail 17 there. It's a February 8th, 2001 e-mail from you to 18 Mr. VanVeelen. Do you see that one?</p> <p>19 A Yes.</p> <p>20 Q And I think -- correct me if I'm wrong -- 21 this reflects what we were talking about a little bit</p>
<p>27</p> <p>1 A Yes. Yes. The idea that Sagent would help 2 to sell the product was discussed.</p> <p>3 Q And tell me who was involved in that 4 conversation and who said what?</p> <p>5 A Primarily that would have been Dan 6 VanVeelen, as he was the main contact as far as the 7 product was concerned, and he would have the feel for 8 what leads they'd have. And he would have an opinion 9 as well that he did put into the conversation about 10 future client activity. The numbers that we might 11 expect to -- projects we might expect to go into as 12 well.</p> <p>13 Q Is it your contention that MICROS has paid 14 to Sagent any portion of the \$136,000 reflected on both 15 the purchase order as well as the price quote provided 16 earlier to MICROS by Sagent?</p> <p>17 MR. TOW: Objection as to form.</p> <p>18 Q Did you understand the question?</p> <p>19 A Yes. I understand, and I do not believe 20 that any portion of this amount has been paid.</p> <p>21 Q Let me hand you the next document which</p>	<p>29</p> <p>1 earlier with regard to deletion of the maintenance 2 support aspect of the initial invoice as well as the 3 reconfiguration of the mix of product. Is that your 4 understanding?</p> <p>5 A That's right.</p> <p>6 Q And if you look at the e-mail above that, 7 which is Mr. VanVeelen's reply to that of that same 8 date, it appears that Sagent is amenable to those 9 changes. Is that your understanding?</p> <p>10 A Yes.</p> <p>11 Q And those changes would in turn reduce the 12 amount of the invoice from the initial 136,000 down to 13 112,000. Is that your understanding?</p> <p>14 A That's right.</p> <p>15 Q Is it your contention that MICROS has paid 16 to Sagent any portion of that 112,000?</p> <p>17 A I do not believe any portion of that has 18 been paid.</p> <p>19 Q Let me ask you to take a look at -- it is 20 in that same document. If you'd turn to page 6. If 21 you look a little more than halfway down at the close</p>

54 1 Q Let me hand you what we are going to mark 2 as Exhibit Number 5 which bears MICROS Bates number 11 3 and 12. 4 MR. PHILLIPS: And I will point out, 5 Michael, that my copy was poor. We can confirm that 6 this is actually another 1 that is the following 7 number. 8 MR. TOW: That's fine. 9 (Callnin Deposition Exhibit Number 5 was 10 marked by the reporter.) 11 A Okay. 12 Q Mr. Callnin, this purports to be an e-mail 13 that Tiffany Nguyen -- N-G-U-Y-E-N -- that Sagent sent 14 to you on October 18, 2001 in which she attaches a 15 "revised invoice for the initial sales," and again, let 16 me ask you if you recall receiving this e-mail and the 17 attachment? 18 A This one, yes. I recall receiving this. 19 Q Both pages? 20 A Yes. 21 Q An did you read it when you received it?	56 1 A That's the old headquarters of MICROS 2 Systems. 3 Q And what is currently housed there? 4 A Just the original office building, and I'm 5 not sure if we still have a receiving department there 6 or not. We may have completely vacated the area. 7 Q What was there as of June 30th, 2000? 8 A At that point, there was a receiving area 9 there. 10 Q And is it your understanding that the 11 software and analytical calculator that Sagent shipped 12 to MICROS was actually delivered to that address as 13 opposed to this address? 14 A That might be accurate. I'm not certain, 15 but that would be about right. 16 Q Let me ask you. I think it might be 17 reflected on Exhibit Number 1. Does that refresh your 18 recollection in responding to that previous question? 19 A Yes. It appears that they have that as 20 their ship to address. So it was likely the location 21 where their software arrived.
55 1 A Yes. 2 Q Does the second page, which is page 12, is 3 that the corrected invoice that you were referring to 4 earlier that you said arrived sometime in late 2001? 5 A Yes. There is the corrected invoice. 6 Q Let me shift gears a little bit and ask you 7 about the answers to interrogatories that MICROS has 8 provided in this case. Did you have any role in 9 preparing those answers to interrogatories? Let me 10 first ask you whether you have ever seen them? 11 A I've seen them within the last couple of 12 weeks. 13 Q And that probably answers my next question. 14 Did you have any role in preparing them? 15 A No. 16 Q Were you asked to review them, once they 17 had been completed, for accuracy or completeness? 18 A No. 19 Q There is a reference in the answers to 20 interrogatories to an address at Beltsville, 12000 21 Baltimore Avenue. Can you tell me what is there?	57 1 Q And it's not your contention, is it, 2 Mr. Callnin, that Sagent failed to deliver either 3 that -- the software or analytical calculator that is 4 reflected and contemplated in Exhibit Number 1, is it? 5 A No. 6 Q Do you have an understanding of who would 7 have re -- who physically would have received the 8 software from Sagent at the Beltsville address as of 9 the June, July 2000 time frame? 10 A I don't know. 11 Q You mentioned a receiving department 12 earlier; is that correct? 13 A Uh-huh. 14 Q That was there at the time? 15 A Yes. 16 Q How many people worked in that department? 17 A I don't know. 18 Q Do you know who the head of it was back in 19 the June, July 2000 time frame? 20 A No. 21 Q Do you know the names of any of the people

Scott Callnin - 1/22/03

<p>58</p> <p>1 who worked in the receiving department during that time 2 frame?</p> <p>3 A No.</p> <p>4 Q Did you ever personally see the software 5 that Sagent delivered to MICROS?</p> <p>6 A Yes.</p> <p>7 Q When did you see it?</p> <p>8 A I can't recall even very closely when it 9 did arrive. It was, as best I can recall, sometime in 10 the fall of 2000.</p> <p>11 Q And at that time was your office in 12 Beltsville?</p> <p>13 A I believe we moved -- two years ago, no. 14 Three years ago. Yes, I believe. No. I believe we 15 were here in this location. Fall of 2000 we were here 16 at this location.</p> <p>17 Q Were you physically here when you saw the 18 software for the first time?</p> <p>19 A Yes.</p> <p>20 Q Can you describe for me what it looked 21 like? Was it open? Was it in packaging?</p>	<p>60</p> <p>1 been multiple.</p> <p>2 Q I think you said that the disk, or disks 3 were shrink wrapped at that time, right?</p> <p>4 A Yes.</p> <p>5 Q And you took them out of not the shrink 6 wrap, but the mailing package?</p> <p>7 A Correct.</p> <p>8 Q And put them on a shelf in your office?</p> <p>9 A That's right.</p> <p>10 Q Did you or anyone else at your direction 11 make copies of either the disk or disks that were 12 contained therein?</p> <p>13 A No. They were never removed from the 14 shrink wrap.</p> <p>15 Q How long did they stay on the shelf in your 16 office?</p> <p>17 A Probably about fourteen months. Again, I 18 don't have a good recollection of exactly when I 19 received them or when I turned them over.</p> <p>20 Q And to whom did you turn them over 21 ultimately?</p>
<p>59</p> <p>1 A It was delivered actually to me in my 2 office. I opened the mailing box, and the software 3 manuals and disks were shrink wrapped, and I put that 4 on my shelf in my office.</p> <p>5 Q So it was initially delivered to MICROS, 6 Beltsville, correct?</p> <p>7 A That's right.</p> <p>8 Q And then there is some sort of internal 9 delivery procedure within the company whereby it made 10 its way from Beltsville to Columbia?</p> <p>11 A Correct.</p> <p>12 Q You mentioned multiple disks. How many 13 were there?</p> <p>14 A I don't recall. It may have been one 15 because I knew it's their practice to put all the 16 various software on one disk and just provide a 17 different key for what they wanted to unlock on the 18 disk. Though there may have been documentation disks 19 or tutorial discs as well, or perhaps portions of what 20 was delivered might have been on a second disk. I 21 can't remember. It might have been one. It might have</p>	<p>61</p> <p>1 A To Michael Tow.</p> <p>2 Q And that was approximately fourteen months 3 after they arrived in your office in the fall -- did 4 you say the fall of 2000? Yeah.</p> <p>5 A That would be about right.</p> <p>6 Q Did you turn all of that material over to 7 Mr. Tow at one time?</p> <p>8 A Yes. That's right.</p> <p>9 Q Did he return to you some months later and 10 retrieve from you additional materials provided by 11 Sagent?</p> <p>12 A I don't recall if he did.</p> <p>13 Q Do you have an understanding of what 14 Mr. Tow did with the materials he retrieved from you?</p> <p>15 A I believe he returned them to Sagent.</p> <p>16 Q Do you have an understanding as to why?</p> <p>17 A I believe that was to show them -- to 18 return it in the form it came. Was to show them that 19 we hadn't ever used the software.</p> <p>20 Q But I mean why was it returned at all?</p> <p>21 A At the time that it was asked from me and I</p>

16 (Pages 58 to 61)

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Scott Callnin - 1/22/03

<p>66</p> <p>1 between the two companies where you say -- you talk 2 about what the products mix will be, what the delivery 3 terms will be, what the price will be? That sort of 4 back and forth?</p> <p>5 A Yes. I had experience in that regard again 6 with Sagent, but more on the lines of the consultant -- 7 the services we would agree to purchase from them on 8 various projects.</p> <p>9 Q I read some of e-mails about a gentleman 10 who worked for Sagent by the name Sanjay?</p> <p>11 A Sanjay, yes.</p> <p>12 Q He did some consulting work for MICROS with 13 regard to I think the AmeriKing project; is that right?</p> <p>14 A That's right.</p> <p>15 Q And at some point the number of days were 16 beyond budget, and MICROS asked Sagent to basically 17 make a concession on the number of days that Sanjay had 18 spent on that consulting work, right?</p> <p>19 A We did.</p> <p>20 Q And ultimately there was an agreement on 21 the number of days that would be credited back to</p>	<p>68</p> <p>1 Q At any point during this transaction, did 2 you write, in either a letter or e-mail, to 3 Mr. Comstock, Mr. VanVeelen, or anybody else at Sagent 4 expressing the idea that there was an agreement here 5 that was not expressed previously in writing, and that 6 agreement was that Sagent would accept the software 7 package and the analytical calculator in return for a 8 full refund to MICROS if MICROS couldn't relicense or 9 resell that?</p> <p>10 A I never sent any e-mails that -- to that 11 extent in that language.</p> <p>12 Q Did you send any e-mails or correspondence 13 that had similar language to it? I don't mean to box 14 you in with my specific verbiage.</p> <p>15 A No. With regard to the returning of the 16 software, I don't think that I had any correspondence 17 with Matt or with Dan.</p> <p>18 Q The software, the records will reflect, I 19 think, was returned in December of 2001, and the date 20 of Exhibit Number 1 is June 30th, 2000. So we are 21 talking about an eighteen-month gap there. I mean from</p>
<p>67</p> <p>1 MICROS, correct?</p> <p>2 A Correct.</p> <p>3 Q If MICROS was to receive a written price 4 quote from a vendor and you didn't agree with all of 5 the terms as set forth in that quote, how would you 6 convey your disagreement and request the changes back 7 to that vendor?</p> <p>8 A That would have been through direct contact 9 with either Dan VanVeelen or Matt Comstock.</p> <p>10 Q Would that have been in writing?</p> <p>11 A More often than not it was at least 12 preceded by a phone call with an agreement to -- the 13 idea that was put forth, and in probably most 14 situations but not all, follow-up with a formal e-mail.</p> <p>15 Q At any time did you write to either 16 Mr. Comstock or Mr. VanVeelen expressing the notion 17 that, "Wait a minute, guys, there is something that is 18 not reflected here, and that is your agreement to 19 accept for a full refund the software package in return 20 if we, MICROS, couldn't resell or relicense it"?</p> <p>21 A The question one more time.</p>	<p>69</p> <p>1 any time, let's say from May 2000 forward, did you 2 express in writing the sentiment that there are -- had 3 yet to be reflected in writing the agreement between 4 MICROS and Sagent that Sagent would accept the software 5 in return for a full credit back to MICROS if MICROS 6 couldn't relicense or resell its software?</p> <p>7 MR. TOW: Objection. Asked and answered. 8 Answer it again.</p> <p>9 MR. PHILLIPS: I don't think it has been 10 answered, but it has been asked.</p> <p>11 A No. I didn't send any correspondence with 12 any language to that extent.</p> <p>13 Q Are you aware of anyone within MICROS who 14 did send such a correspondence or e-mail?</p> <p>15 A I am not aware of. I don't remember seeing 16 such a correspondence or being perhaps copied on 17 correspondence with that request, but I would only 18 speculate that that was done.</p> <p>19 Q As the initial contact on the MICROS end 20 for this transaction, would you typically be copied on 21 any such correspondence if it existed?</p>

70 1 A In the earlier part of the talks about this 2 transaction, yes, but not necessarily the sixteen, 3 eighteen months later when it wrapped up. 4 Q The earlier part would include the June 5 6th, 2000 time frame when you attended the meeting, 6 right? 7 A Uh-huh. 8 Q So if there was any correspondence going 9 back from anyone at MICROS to Sagent expressing the 10 notion that you and I are talking about now, in that 11 early part of the deal, you typically would have been 12 copied on that, right? 13 A Likely. 14 Q Are you aware of any documents either to or 15 from Sagent which reflects that it was Sagent's 16 understanding that its sale of this software package 17 and analytical calculator to MICROS was conditional 18 upon anything? 19 A Am I aware of any correspondences to that 20 extent? 21 Q Any document, and I mean to include	72 1 Insight -- that part and parcel the Insight product was 2 the software package that is the issue of this 3 particular transaction? 4 A Part of the original invoice in question is 5 involved with it. The data movement is absolutely 6 necessary to that product as it existed. The reporting 7 aspect of it would be an option, not necessarily 8 automatically included in it. 9 Q Let me hand you the next exhibit, and we 10 are up to 6. 11 (Callnin Deposition Exhibit Number 6 was 12 marked by the reporter.) 13 MR. PHILLIPS: This bears MICROS Bates 14 numbers 161 through 163. Let's go off the record. 15 (A recess was taken.) 16 Q Easy question. Is it your handwriting? 17 A No, it is not. 18 Q On none of these three pages? 19 A Correct. 20 Q Do you recognize whose handwriting it is? 21 A I do not.
71 1 document, correspondence, e-mails, or handwritten notes 2 that were provided to Sagent. 3 A I'm not aware of anything in writing to 4 that extent. 5 Q Again, let me just ask for your sort of 6 technical expertise in this area. We talked about the 7 concept of data warehousing, and you may have answered 8 this. I may have already previously asked you. Can 9 you give me an idea of what that is, and is that what 10 you mentioned early on about collecting point of sale 11 information and analyzing or providing it in raw data? 12 MR. TOW: Objection as to form. You can 13 answer. 14 Q It is a poorly formed question. I'm trying 15 to learn what data warehousing is. 16 A But I think your summary was correct. 17 Q Do I understand that the Insight product 18 was a jointly developed product between Sagent and 19 MICROS? 20 A That's right. 21 Q Do I understand correctly that the	73 1 Q Let me ask you a little bit more about the 2 June 6th, 2000 meeting that we talked about earlier. 3 Do you know who called that meeting? 4 A I was the contact on putting it together 5 through Dan VanVeelen. I believe may have had Gene 6 Garrett contact Peter Rogers at that point, and that 7 was called between Gene and Peter. 8 Q And I think earlier you testified that 9 generally the purpose of the meeting was to discuss 10 future prospect for this product, what the two 11 companies could do with it; isn't that right? 12 A Uh-huh. That's right. 13 Q Were there other items on the agenda, if 14 you will? 15 A No. I think that was the sole purpose of 16 that visit. They were -- Sagent, that is, particularly 17 Gene, was very concerned with missing some numbers in 18 there at the end of the quarter, and the primary, if 19 not sole, concern of that meeting was to get some 20 prepurchased software on the records by the end of the 21 quarter.

78 <p>1 Q Do you recall language about the notion 2 that the software would be returned to Sagent? 3 A I don't think we had discussions about the 4 possibility of needing to return it strictly because of 5 the upbeat nature of going forward with the project and 6 being able to find some clients eventually for this. 7 Q Let me ask you about another meeting that 8 the documents produced to date reflect occurred. That 9 was on May 10, 2000. Do you recall attending a meeting 10 on that date with regard to this particular software 11 package? 12 A No. I don't recall a May 10 meeting. I 13 recall specifically one meeting which I'm quite certain 14 was the June 6th. I heard some reference here to May 15 10, but I don't recall that at least in the context of 16 this software agreement. 17 Q Do you recall any discussion at any time -- 18 any statement at any time from a Sagent representative 19 which indicated that Sagent would resell any licenses 20 that MICROS was unable to sell? 21 A Once again.</p>	80 <p>1 Q One of the allegations in MICROS 2 counter-claim is that MICROS elected to license the 3 Sagent software directly from Sagent based in 4 substantial part on representations made by Sagent 5 personnel. Is that your understanding? 6 A Can you restate the claim again? 7 Q The allegation is that MICROS elected to 8 license this particular software directly from Sagent 9 based in substantial part on representations made by 10 Sagent personnel. 11 A Representations that they would help us 12 resell it. That they would act on their, as I said, 13 prior agreements to be a 50-50 partner. 14 Q Specifically the allegation says that 15 decision was based "in substantial part on those 16 representations." Do you have an understanding that 17 there were other factors that went into MICROS' 18 decision to license the software directly from Sagent? 19 A Once again with the statement. 20 Q The allegation indicates that MICROS 21 decided to license the software directly from Sagent in</p>
79 <p>1 Q Can you recall any statement made by any 2 Sagent representative at any time which indicated that 3 Sagent had agreed to resell any licenses that MICROS 4 was not able to sell? 5 A No. I don't think it was that they would 6 resell. It was that they would help us resell those 7 licences that we were talking about prepurchasing. 8 Q And again did that come from Mr. Garrett? 9 A Yes. It would have been. 10 Q Was that the May 6th meeting -- June 6th 11 meeting? 12 A Yeah. That was from the one meeting I 13 attended which I'm pretty sure was the June 6th and not 14 the other date that's brought up. 15 Q Apart from the June 6th meeting, did you 16 attend any other meeting where Sagent personnel were 17 present and indicated that MICROS could return the 18 software and the calculator to Sagent for a full refund 19 if MICROS couldn't resell it or relicense it? 20 A I was not involved with additional meetings 21 beyond that on.</p>	81 <p>1 substantial part based on the representations made by 2 Sagent. That leads me to believe that there may have 3 been other factors that went into that decision, and 4 I'm asking you if you are aware of any other factors in 5 that regard? 6 A That substantial basis was probably, you 7 know, a reference to again their comments that they 8 would help to sell the product. 9 If there were other issues, it would be in 10 regard to my frustrations that I had been expressing to 11 my superiors about having to do -- spending so much 12 time on doing the billings, not having the invoices 13 correct, just general accounting errors that we had to 14 continually follow up on, and also I had expressed a 15 concern of them not following up on, again, the idea of 16 50-50 partnership when it came to development work. 17 Nonclient paying projects. It was very evident that 18 they were not willing to put anybody on typical R&D 19 type stuff unless it was a fully paying client who was 20 going to pay them for their time. 21 Q One of the other allegations in the counter</p>